

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 7527 of 1988

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PANKAJ M JOSHI

VERSUS

DISTRICT PANCHAYAT, BHARUCH

Appearance:

MR PV HATHI for the Petitioner

MS SEJAL MANDAVIA for the Respondent No.1

MR MUKESH A PATEL for Respondent No.5

None present for other Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 26/10/1999

C.A.V. JUDGMENT

1. The petitioner, an employee of the District

Panchayat, Bharuch, by this petition under Article 226 of the Constitution of India is praying for declaration that he is a regular appointed Wireman Assistant Instructor and is entitled to continue in services of the District Panchayat, Bharuch. Second prayer has been made for direction to the respondents not to terminate the services of the petitioner on the ground of qualifications and non-approval of his appointment by the Panchayat Selection Board. Prayer has been made for restraining the respondents from terminating his services.

2. This petition was admitted on 8th November, 1988 and interim relief in terms of para-15 (D) has also been granted. On 28th November, 1988, this Court ordered for continuation of interim relief till further orders. The order of this Court dated 28th November, 1988, reads as under:

Mr. P.M. Raval appears for respondents No. 1, 2 and 3. Though served, no one appears on behalf of respondents No. 4 and 5. Heard the learned counsel appearing for the parties with regard to interim relief.

In the facts of the case and particularly in view of the fact that the petitioner is in service for last about seventeen years, it is necessary that the ad-interim relief granted earlier be continued till further orders. Hence, ad-interim relief granted earlier to continue till further orders.

3. The facts of the case, which are not in dispute are that the petitioner was appointed as Mechanical Assistant Instructor in the District Panchayat on his selection through the Gujarat Panchayat Services Selection Board. This appointment was made on 13th July, 1971. In later point of time he has also been conferred permanency benefits by a specific order. The Panchayat was running an institution for providing training in different trades to the residents in the rural areas. The post on which the petitioner was appointed appears to have been abolished for want of requisite number of students. He was taken from 30th June, 1977 as Wireman Assistant Instructor.

4. Learned counsel for the petitioner stated that the petitioner was taken on the lower post in the lower pay scale and he continued on that post. The pay scale of the post of Wireman Assistant Instructor at the

relevant time is stated to be of Rs.240-430. In later point of time, his case was sent for approval to the Board and the Board in turn sent it to the Government but the Government decided not to appoint him as Wireman Assistant Instructor and recommended for terminating his services. Before his services could be terminated, the petitioner approached to this court by this special civil application and he has been protected by grant of interim relief and he continued in service till he attained the age of superannuation during the pendency of the special civil application on 31st December, 1998. He was ordered to be relieved on retiring from the services and he has been given pension and other retirementary benefits though may be on provisional basis.

5. This petition has been contested by the respondents by filing reply to the special civil application to which the rejoinder has been filed.

6. Learned counsel for the petitioner contended that the petitioner was selected for the post of Mechanical Assistant Instructor and thereafter he was given the appointment. On abolition of the said post, the petitioner was taken as Wireman Assistant Instructor though in the lower pay scale in pursuance to the Government's own order dated 6th May, 1977. This appointment was made on the vacant post and it continued for all the years. In view of these facts, the counsel for the petitioner contended that the services of the petitioner should have been regularised and he should have been ordered to be continued rather than to take the action of not regularizing his services. His case is squarely covered, what the counsel for the petitioner contended, under the Government's own order dated 6th May, 1977.

7. On the other hand, learned counsel for the respondents contended that the petitioner was not selected for the post of Wireman Assistant Instructor by the Board. On this post, his appointment could have been made by selection only. As it was not done and this appointment was also not approved by the Government, the respondents have acted perfectly in accordance with the law to terminate his services.

8. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

9. The facts are not in dispute that the petitioner

was appointed on the post of Mechanical Assistant Instructor after selection. On the abolition of that post, he was absorbed on the post of Wireman Assistant Instructor on 30th June, 1977. This was a clear vacant post as the holder thereof was promoted to the post of Wireman Instructor. The District Panchayat itself has passed this order and given all the benefits of permanency to the petitioner. It also referred his case for regularisation of his services on the post of Wireman Assistant Instructor but it was not approved by the Government. It is also not in dispute that he attained the age of superannuation during the pendency of the special civil application and he has been given the retiral benefits. The Government's order NO. SRJ/1074/2131/N of the Panchayat, Housing and Urban Development Department dated 6th May, 1977 has also not been disputed by the counsel for the parties.

10. From the pleadings of the parties, I find that the Industrial Training Centres/ Schools were being run under the Panchayat and therein the appointments were made after selection by the Board. The possibility of the closure of the class or school itself on non-availability of grant or students was there. These schools/centres were run under the financial aid of the State of Gujarat. The order of the State Government dated 6th May, 1977 is a relevant document to this petition which spells out that in case where the Industrial centres/schools are likely to be closed and if the employees who are to be relieved possibly be absorbed on equivalent post or on post carrying less pay scale and all efforts have to be made in this regard by the concerned Panchayat and where approval of the State Government is necessary, clear proposal has to be made. I find sufficient merits in the contention of the learned counsel for the petitioner that the case of the petitioner squarely falls under the Government order dated 6th May, 1977. It is a case where the post of the petitioner was abolished for want of requisite number of students. It is true that the petitioner was appointed in the mechanical trade and he was absorbed in the trade of wireman. Technically speaking these two trades may be different and for each trade selection may be necessary from the Board but we have to go by the substance of the matter as well as the conduct of the respondents and the action taken which is permissible under the Government's own order dated 6th May, 1977, normally the absorption should have been on the equivalent post or on the lower post of the same trade but in this case it happened in the year 1977 and on available post of Wireman Assistant Instructor, the

petitioner was absorbed on the lower post. This was not objected. The permanency benefits have also been given to the petitioner by the District Panchayat which were also not objected. He continued to work for 13 years when the occasion arose for him to file this special civil application. He has been protected by this court. It is true that interim relief is always subject to the final decision in the case and whatever orders passed in pursuance to the interim relief are subject to the final decision of the special civil application but at this stage, when the petitioner has also attained the age of superannuation, on this technical approach, the petitioner cannot be allowed to be nonsuited. Two different trades are watertight compartments and trade transfer was not available or permissible but still it has been done though it is subject to approval. The respondents should have taken more practical and positive approach in the facts of this case where the petitioner is working for last many years and instead of passing the order of disapproving his appointment on the post of Wireman Assistant Instructor, he should have been regularised. The Government's order dated 6th May, 1977 otherwise is very specific and it makes no difference in the matter of absorption with reference to trades. It is a matter where the State Government should have been very clear and in case it has left some ambiguity in its own order, it could have permitted to retain the benefits of the same, till it is not explained what to say, cleared by the respondent-State. In case, at this stage, that is after 27 years of servicing the Panchayat, the petitioner has been deprived of his pension and retiral benefits it will be very harsh and will result in causing serious difficulty and prejudice to the petitioner in old age. Whatever happened in this case happened because of the respondent's own inaction or omission. Apart from this, as per the Government's order dated 6th May, 1977 on abolition of the post, it is permissible to absorb the Instructor on other posts. This resolution very specifically is not prohibiting the appointment of a person from one trade to another and this has been done by the Panchayat under the said resolution, a practical approach should have been made by the State Government by approving this action rather than to direct the District Panchayat to dispense with the services of the petitioner. It is a case where the equities are created in favour of the petitioner. It is not a case where the petitioner entered in the service through back door. It is a case where he was selected though for different trade but for the given reasons he was absorbed in different trade and allowed to work on different trade

and above that there is no complaint from any corner that the petitioner is not fit for the job which has been entrusted to him.

11. Taking into consideration the totality of the facts of his case, the action of the respondents to terminate the services of the petitioner cannot be allowed to stand. The order terminating the services of the petitioner is not on the record but it is not in dispute that the respondent- District Panchayat decided to terminate his services however it was not given effect to as this Court has protected the petitioner by grant of interim relief.

12. In the result, this special civil application succeeds and it is allowed and it is hereby declared that the petitioner's services are not liable to be terminated and his appointment as Wireman Assistant Instructor in the lower pay scale is legal and justified, to which no exception can be taken. Rule is made absolute accordingly with no order as to costs.

zgs/-